

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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CGS INDUSTRIES, INC.,

Plaintiff,

- against -

CHARTER OAK FIRE
INSURANCE CO.,

Defendant.

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**MEMORANDUM
AND ORDER**

10-CV-3186 (JBW) (JO)

JAMES ORENSTEIN, Magistrate Judge:

Defendant Charter Oak Fire Insurance Co. ("Charter Oak") seeks clarification of a court order. Docket Entry ("DE") 77 ("Motion"). On December 15, 2010, the Honorable Jack B. Weinstein, United States District Judge, ordered that he would deem the complaint to be amended *nunc pro tunc* to include a request for recovery of the \$250,000 settlement amount that plaintiff CGS Industries, Inc. ("CGS") paid to a non-party to settle the underlying litigation, as well as defense costs CGS paid to another non-party. Charter Oak seeks to clarify whether the amendment was intended to amend merely the prayer for relief on the Amended Complaint's cause of action asserting that Charter Oak breached its contractual duty to defend CGS in the underlying litigation, or instead whether Judge Weinstein deemed CGS to have added a wholly new substantive claim for indemnity. Motion at 1; DE 84 (Reply) at 1. Judge Weinstein has referred the motion for clarification to me. *See* DE 86.

I agree with CGS that no clarification is needed. *See* DE 78; DE 85. CGS has made clear that it intends to seek, as damages on the claim asserting that Charter Oak breached its duty to defend, the \$250,000 that CGS paid to settle the claims against it and the expenses it incurred in defending Wal-Mart. *See* DE 68 (Transcript) at 3, 13; DE 78 at 4. Judge Weinstein plainly ordered that the Amended Complaint would be deemed amended to reflect CGS's understanding

of its own claims. *See* Tr. at 3. Judge Weinstein further ruled, based on his interpretation of applicable law, that Charter Oak would not be permitted to retry the facts of the underlying case.

Id. at 7, 10, 12. I therefore deny the motion for clarification.

SO ORDERED.

Dated: Brooklyn, New York
January 26, 2011

/s/ James Orenstein
JAMES ORENSTEIN
U.S. Magistrate Judge